

CASE NO. PD-0322-21

**IN THE COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS**

FILED
COURT OF CRIMINAL APPEALS
10/15/2021
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SAMUEL CRAWFORD PATTERSON, APPELLANT

VS.

THE STATE OF TEXAS, APPELLEE

**ON PETITION FOR DISCRETIONARY REVIEW
FROM THE TENTH COURT OF APPEALS
WACO, TEXAS
COURT OF APPEALS NO. 10-19-00243-CR
REVERSING THE CONVICTION IN BRAZOS COUNTY
CAUSE NO. 17-00251-CRF-361**

STATE'S BRIEF ON THE MERITS

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TRIAL COURT: Hon. Steve Smith
Former Presiding Judge, 361st District Court
Brazos County, Texas

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STATE'S BRIEF ON THE MERITS

TO THE HONORABLE COURT OF APPEALS:

COMES NOW, the State of Texas, by and through its District Attorney, and files this brief outlining why the Tenth Court of Appeals incorrectly ruled that the search warrant in Appellant's case was facially invalid, and would respectfully show the Court the following:

STATEMENT OF THE CASE

Appellant, Samuel Patterson, was charged by indictment with two counts of Possession of a Controlled Substance; one in Penalty Group 1, less than 1 gram and

the other from Penalty Group 1-A, less than 20 abuse units, both State Jail Felonies. (CR at 4); TEX. HEALTH & SAFETY CODE §§ 481.113 & 481.1121, respectively. Appellant filed an Amended Motion to Suppress on September 22, 2017. (CR 12-27). The trial court conducted an evidentiary hearing on Appellant's Amended Motion to Suppress, as well as joining five other co-defendants' motions to suppress, on September 29, 2017. (RR Vols. 2 & 6).

The trial court denied Appellant's Amended Motion to Suppress by written order on July 17, 2018. (CR 162).

Following the denial of Appellant's Motion to Suppress, the trial court did not enter written findings of fact and conclusions of law.

Appellant entered an open plea of guilty and elected for punishment to be assessed by the trial court. (2 RR 9-11). The trial court assessed Appellant's punishment at two years' confinement in State Jail, but probated that sentence for five years with various conditions as described in the judgment. (CR 165-168, and 189-192).

Notice of appeal was filed on July 3, 2019. (CR 170-171) Appellant did not request, and the trial court did not conduct, any post-conviction hearings.

STATEMENT OF PROCEDURAL HISTORY

On December 9, 2020, in an unpublished opinion, the Tenth Court of Appeals reversed the judgment of the trial court as to Appellant's conviction for Possession

of a Controlled Substance. *Patterson v. State*, No. 10-19-00243-CR, 2020 Tex. App. LEXIS 9596 (Tex. App. -- Waco Dec. 9, 2020).

On January 4, 2021, the State timely filed a Motion for Rehearing. On April 28, 2021, the Tenth Court of Appeals denied the State's Motion for Rehearing.

The State's Petition for Discretionary Review was timely filed, and was granted by this Court on September 15, 2021 as to the following issue: Whether a search warrant was facially valid because it incorporated the warrant affidavit, which specifically listed Appellant's room as containing narcotics.

STATEMENT OF FACTS

On August 20, 2016, police and medics responded to multiple emergency calls regarding a drug overdose at the Sigma Nu fraternity house in College Station. (2 RR 40-41, 51, 105-106), (6 RR 28-42). One of the 911 calls originated from the Sigma Nu house itself. (6 RR 32-37). Another of the calls was from a medical center, wherein medical staff informed police that "friends of [the overdose victim]" called the hospital concerning the overdose, and stated that "they did not want to call 911 because they didn't want to get in trouble for the illicit drugs." (6 RR 37). A third 911 call was from a woman identifying herself as the sister of a Sigma Nu member, stating that her brother informed her that a resident had overdosed on heroin, but that her brother was not calling 911 because he was "too fucked up to think straight,"

and said of the fraternity members, “they’re all taking obviously illegal drugs.” (6 RR 29-31, 38-39).

When College Station police arrived, they found a fraternity member, later identified as Anton Gridnev, unconscious and apparently deceased in the entryway of the house. (2 RR 42-43, 54, 109, 158). Despite Gridnev exhibiting no signs of life, police and medics began life-saving measures. (2 RR 44-45, 54, 109, 158). Officers noted that Gridnev’s body had obviously been moved to its location from elsewhere in the house. (2 RR 48, 118). Several officers also described their concern that others in the house, where a party had occurred, may have taken the same substance as Gridnev and could be in danger of overdose. (2 RR 53-55, 194, 201-202). Consequently, police swept through the house looking for people. (2 RR 62-65, 69, 120, 166-67, 169, 191-93, 200-02). According to police department policy, sweeps looking for people involve two passes through the rooms of the house in order to make sure they do not miss someone. (2 RR 171-172, 204-05).

During that process, officers noticed that narcotics and drug paraphernalia were plainly visible in many rooms in the house, including multiple bedrooms and a common room. (2 RR 71-74, 206), (State’s Exhibit 1 at 6 RR 22-24). The house smelled like marijuana. (2 RR 163-164, 276). Because officers were looking for people, rather than physical evidence, they did not seize any drugs or other contraband as they saw them, choosing instead to leave them in place. (2 RR 73,

209, 224). During officers' initial sweep through the house, they did not note which specific rooms contained contraband. (2 RR 73).

Later in the morning, narcotics investigator Reilly Garrett arrived and was shown which rooms contained visible contraband. (2 RR 219-20). Using that information, Investigator Garrett then drafted a search warrant affidavit and presented it to a judge. (2 RR 224), (State's Exhibit 1 at 6 RR 16-26). The affidavit described a total of twelve different parts of the house which had visible evidence of narcotics activity:

- Front entry way – the body of Anton Gridnev;
- Downstairs theater room – apparent THC concentrate and assorted paraphernalia;
- Room 104 – suspected cocaine with assorted paraphernalia;
- Room 105 – marijuana residue with paraphernalia;
- Room 213 – crushed blue powder, marijuana, and assorted paraphernalia;
- **Room 216 (Appellant's room) – suspected cocaine and baggies with residue inside;**
- Room 214 – marijuana residue and paraphernalia;
- Room 210 – marijuana residue;
- Room 207 – glass smoking bong;
- Room 202 – suspected Psilocybin mushrooms;
- Room 203 – marijuana residue and paraphernalia;
- Room 208 – glass pipe containing burned marijuana, and paraphernalia

(State's Exhibit 1 at 6 RR 16-26) (emphasis added).

The reviewing judge signed a search warrant which incorporated the contents of the supporting affidavit "for all purposes":

SEARCH WARRANT

The State of Texas: To the Sheriff or any Peace Officer of Brazos County, Texas, or any Peace Officer of the State of Texas, or Special Investigator of the State of Texas or any Special Investigator of the United States:

Whereas, the affiant, whose name appears on the affidavit attached hereto is a peace officer or special investigator under the laws of Texas and did heretofore this day subscribe and swear to said affidavit before me **(which said affidavit is here now made a part hereof for all purposes and incorporated herein as if written verbatim within the confines of this Warrant)**, and whereas I find that the verified facts stated by affiant in said affidavit show that affiant has probable cause for the belief he expresses herein and establishes the existence of proper grounds for issuance of this Warrant;

Now, therefore, you are commanded to enter the suspected place described in said affidavit, to-wit, the following:

(6 RR 8 – State’s Exhibit 1 – signed Search Warrant and Affidavit) (emphasis in original).

Appellant was subsequently indicted for two counts of the State Jail Felony offense of Possession of a Controlled Substance in connection with cocaine which was located in his room. (CR 4); TEX. HEALTH & SAFETY CODE §§ 481.113 & 481.1121. Appellant filed a Motion to Suppress Evidence on September 22, 2017. (CR 12-27). On September 29, 2017, the trial court conducted an evidentiary suppression hearing on Appellant’s motion, as well as on similar motions filed by Appellant’s five co-defendants. (2 RR 2). On July 17, 2018, the trial court denied Appellant’s Motion to Suppress. (CR 162).

During the hearing on the Motion to Suppress, Appellant testified that he was a member of the Sigma Nu fraternity at Texas A&M University. (2 RR 13). Appellant lived at the Sigma Nu fraternity house. (2 RR 14). Each fraternity member living at the house had their own room. (2 RR 15). Only members of the fraternity lived at the house. (2 RR 13-14). The Sigma Nu house consisted of approximately 25 bedrooms. (2 RR 14-15, 237). The house was not open to the public. (2 RR 16). Appellant testified that there is one front door to the house, which fraternity members kept locked. (2 RR 17). Appellant conceded that, just as any other private residence, non-residents were not permitted to enter the house without permission. (2 RR 16-18). Appellant agreed that, should a non-resident walk into the house, he would be confronted by fraternity members, even if the door were left unlocked. (*Id.*). The bedrooms in the house did not have bathrooms. (2 RR 19). Instead, fraternity members shared two large common bathrooms. (2 RR 19, 21, 69, 225, 244). Additionally, the house had living rooms, fraternity meeting rooms, and a single shared kitchen. (2 RR 14-15, 19-26), (6 RR 6-14, 24-25). Appellant also described how mail was delivered to the house, rather than to individual rooms. (2 RR 20). Despite Appellant's testimony that he signed a lease "for room 216" of the Sigma Nu house (2 RR 12), Appellant's lease (6 RR 60-67), as well as those of other fraternity members, were for the house itself at 550 Fraternity Row in College Station, rather than for individual rooms. (2 RR 12, 35), (6 RR 52-83).

SUMMARY OF THE ARGUMENT

The search warrant was facially valid, and the search of Appellant's bedroom room was within the warrant's scope. Appellant's bedroom in the Sigma Nu fraternity house was specifically described in the body of the search warrant affidavit, which was then incorporated "for all purposes" into the warrant itself.

In ruling that the search warrant authorizing the seizure of evidence from Appellant's bedroom was facially invalid for failing to describe that room with sufficient particularity, the Tenth Court of Appeals disregarded the incorporated affidavit's content, and also failed to follow established precedent that the contents of an incorporated affidavit control over the warrant's description of the place to be searched.

The Tenth Court of Appeals acknowledged that the warrant incorporated the affidavit. However, in its analysis, the court only considered that Appellant's room was not referenced in the specific paragraph which described the "suspected place." In effect, the Tenth Court of Appeals ruled that the substantive content of an incorporated affidavit, which describes the details of an investigation, is irrelevant in a particularity analysis. Such a ruling constitutes reading a warrant in a hyper-technical fashion, rather than the common-sense reading which Texas courts have long followed. The Tenth Court of Appeals' decision also contradicts established

authority which states that the detailed content of an incorporated affidavit may be considered in evaluating the facial validity of a search warrant.

STATE'S ARGUMENT

The Tenth Court of Appeals incorrectly held the search warrant in Appellant's case to be facially invalid for failing to describe Appellant's bedroom in a fraternity house, where that room was specifically identified by room number in the search warrant affidavit as containing suspected drugs, and the affidavit was incorporated into the warrant itself for all purposes.

Standard of Review

A trial court's ruling on a motion to suppress evidence is reviewed under a bifurcated standard. *Amador v. State*, 221 S.W.3d 666, 673 (Tex. Crim. App. 2007); *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997). Appellate courts must afford almost total deference to a trial court's rulings on questions of historical fact and application-of-law-to-fact questions which turn on an evaluation of credibility and demeanor, but review de novo application-of-law-to-fact questions that do not turn on credibility and demeanor. *Amador*, 221 S.W.3d at 673; *Estrada v. State*, 154 S.W.3d 604, 607 (Tex. Crim. App. 2005); *Johnson v. State*, 68 S.W.3d 644, 652-53 (Tex. Crim. App. 2002).

Applicable Law

In assessing the sufficiency of an affidavit for an arrest or a search warrant, the reviewing court is limited to the four corners of the affidavit. *Jones v. State*, 833 S.W.2d 118, 123 (Tex. Crim. App. 1992), cert. denied, 507 U.S. 921, 113 S. Ct.

1285, 122 L. Ed. 2d 678 (1993). The reviewing court should interpret the affidavit in a common sense and realistic manner, recognizing that the magistrate was permitted to draw reasonable inferences. *Davis v. State*, 202 S.W.3d 149, 154 (Tex. Crim. App. 2006).

To comply with the requirement that a warrant describe the place to be searched, all that is required is that the affidavit or search warrant describe the premises to be searched with sufficient definiteness to enable the officer executing the warrant to locate the property and distinguish it from other places in the community. *Ex parte Flores*, 452 S.W.2d 443, 444 (Tex. Crim. App. 1970); *see* Tex. Const. art. 1, § 9 (‘[N]o warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be’); Tex. Code Crim. Proc. arts. 1.06, 18.04.

A warrant that does not contain the place to be searched, the items to be seized, or the person alleged to be in charge of the premises is not invalid provided that the warrant incorporates by reference a sufficiently specific affidavit to support it. *See Green v. State*, 799 S.W.2d 756, 760 (Tex. Crim. App. 1990); *Phenix v. State*, 488 S.W.2d 759, 764 (Tex. Crim. App. 1972). The description contained in the affidavit limits and controls the description contained in the warrant. *Long v. State*, 132 S.W.3d 443, 446 n.11 (Tex. Crim. App. 2004); *Riojas v. State*, 530 S.W.2d 298, 303 (Tex. Crim. App. 1975); *Ramirez v. State*, 345 S.W.3d 631, 633 (Tex. App.--San

Antonio 2011, no pet.); *Greene v. State*, 358 S.W.3d 752, 756 (Tex. App. – Fort Worth 2011, no pet.).

A trial court’s ruling on a motion to suppress must be upheld if it is correct under any theory of law applicable to the case, regardless of whether the trial court based its ruling on that theory. *State v. Story*, 445 S.W.3d 729, 732 (Tex. Crim. App. 2014). An appellate court may affirm a trial court’s decision on a legal theory not presented to the trial court because the ordinary notions of procedural default do not require a prevailing party to list or verbalize in the trial court every possible basis for upholding its decision. *Hailey v. State*, 87 S.W.3d 118, 121-22 (Tex. Crim. App. 2002) (citing *State v. Mercado*, 972 S.W.2d 75, 77-78 (Tex. Crim. App. 1998)); *State v. Huddleston*, 164 S.W.3d 711, 716 (Tex. App. – Austin 2005, no pet.); *State v. Elrod*, 395 S.W.3d 869, 880 (Tex. App. – Austin 2013, no pet.).

Relevant Facts

On August 20, 2016, police and medics responded to multiple emergency calls regarding a drug overdose at the Sigma Nu house. (2 RR 40-41, 51, 105-106), (6 RR 28-42). One of the 911 calls originated from the Sigma Nu house itself. (6 RR 32-37). Another of the calls was from a medical center, wherein medical staff informed police that “friends of [the overdose victim]” called the hospital concerning the overdose, and stated that “they did not want to call 911 because they didn’t want to

get in trouble for the illicit drugs.” (6 RR 37). A third 911 call was from a woman identifying herself as the sister of a Sigma Nu member, stating that her brother informed her that a resident had overdosed on heroin, but that her brother was not calling 911 because he was “too fucked up to think straight,” and said of the fraternity members, “they’re all taking obviously illegal drugs.” (6 RR 29-31, 38-39).

When College Station police arrived, they found a fraternity member, later identified as Anton Gridnev, in the entryway of the house. (2 RR 42-43, 54, 109, 158). Gridnev appeared to be dead. (*Id.*). Despite Gridnev exhibiting no signs of life, police and medics began life-saving measures. (2 RR 44-45, 54, 109, 158). Officers noted that Gridnev’s body had obviously been moved to its location from elsewhere in the house. (2 RR 48, 118). Several officers also described their concern that others in the house, where a party had occurred, may have taken the same substance as Gridnev and could be in danger of overdose. (2 RR 53-55, 194, 201-202).

Thus, police swept through the house looking for people. (2 RR 62-65, 69, 120, 166-67, 169, 191-93, 200-02). According to police department policy, sweeps looking for people involve two passes through the rooms of the house in order to make sure they do not miss someone. (2 RR 171-172, 204-05).

During that process, officers noticed that narcotics and drug paraphernalia were plainly visible in many rooms in the house, including multiple bedrooms and a common room. (2 RR 71-74, 206), (State's Exhibit 1 at 6 RR 22-24). Because officers were looking for people, rather than physical evidence, they did not seize drugs or other contraband as they saw them, choosing instead to leave them in place. (2 RR 73, 209, 224). During officers' initial sweep through the house looking for people, they did not take the time to note which specific rooms contained contraband. (2 RR 73).

Later in the morning, narcotics investigator Reilly Garrett arrived and was shown which rooms contained visible contraband. (2 RR 219-20). Using that information, Investigator Garrett then drafted a search warrant affidavit and presented it to a judge. (2 RR 224), (State's Exhibit 1 at 6 RR 16-26). The affidavit described a total of twelve different parts of the house which had visible evidence of narcotics activity¹:

- Front entry way – the body of Anton Gridnev;
- Downstairs theater room – apparent THC concentrate and assorted paraphernalia;
- Room 104 – suspected cocaine with assorted paraphernalia;
- Room 105 – marijuana residue with paraphernalia;
- Room 213 – crushed blue powder, marijuana, and assorted paraphernalia;

¹ Note that four of Appellant's five co-defendants at the suppression hearing lived in rooms that were specifically listed in the incorporated search warrant affidavit (rooms 202, 203, 213, and 214). (6 RR 18, 24). The bedroom of one co-defendant, Cole Teel-Jongbloed, was not listed in the search warrant affidavit. (*Id.*).

- **Room 216 (Appellant's room) – suspected cocaine and baggies with residue inside;**
- Room 214 – marijuana residue and paraphernalia;
- Room 210 – marijuana residue;
- Room 207 – glass smoking bong;
- Room 202 – suspected Psilocybin mushrooms;
- Room 203 – marijuana residue and paraphernalia;
- Room 208 – glass pipe containing burned marijuana, and paraphernalia

(State's Exhibit 1 at 6 RR 16-26) (emphasis added).

The reviewing judge signed a search warrant which also incorporated the contents of the affidavit "for all purposes." (State's Exhibit 1 at 6 RR 8).

During the hearing on the Motion to Suppress, Appellant testified that he was a member of the Sigma Nu fraternity at Texas A&M University. (2 RR 13). Appellant lived at the Sigma Nu fraternity house. (2 RR 14). Each fraternity member living at the house had their own room. (2 RR 15). Only members of the fraternity lived at the house. (2 RR 13-14). The Sigma Nu house consisted of approximately 25 bedrooms. (2 RR 14-15, 237). The house was not open to the public. (2 RR 16). Appellant testified that there is one front door to the house, which fraternity members kept locked. (2 RR 17). Appellant conceded that, just as any other private residence, non-residents were not permitted to enter the house without permission. (2 RR 16-18). Appellant agreed that, should a non-resident walk into the house, he would be confronted by fraternity members, even if the door were left unlocked. (*Id.*). The bedrooms in the house did not have bathrooms. (2 RR 19). Instead, fraternity

members shared two large common bathrooms. (2 RR 19, 21, 69, 225, 244). Additionally, the house had living rooms, fraternity meeting rooms, and a single shared kitchen. (2 RR 14-15, 19-26), (6 RR 6-14, 24-25). Appellant also described how mail was delivered to the house, rather than to individual rooms. (2 RR 20). Despite Appellant's testimony that he signed a lease "for room 216" of the Sigma Nu house (2 RR 12), Appellant's lease (6 RR 60-67), as well as those of other fraternity members, were for the house itself at 550 Fraternity Row in College Station, rather than for individual rooms. (2 RR 12, 35), (6 RR 52-83).

Discussion – Validity of the Search Warrant

The Tenth Court of Appeals ruled that the search warrant in Appellant's case was facially invalid for failing to describe Appellant's bedroom with sufficient particularity. *Patterson*, No. 10-19-00243-CR, 2020 Tex. App. LEXIS 9596 at *15-16. Specifically, the court concluded that the Sigma Nu fraternity house was akin to a dormitory, rather than a single home, and that the descriptions of the "suspected place" in both the warrant and affidavit were "too broad" in that they failed to describe Appellant's bedroom. *Id.* at *15. In arriving at that conclusion, the court made clear that it only considered the respective parts of the search warrant and supporting affidavit which discussed the "suspected place." *Id.* at *13-15. The Tenth Court of Appeals acknowledged that the search warrant incorporated the affidavit "for all purposes." *Id.* at *15. Yet, despite that acknowledgement, the court

ignored the body of the incorporated affidavit which thoroughly described the details of the investigation, what contraband was in the house, and which rooms contained suspected evidence, *including Appellant's bedroom*. (6 RR 24).

The affidavit was incorporated without any limitations or reservations with respect to its content. (See 6 RR 8 – stating “**said affidavit is here now made a part hereof for all purposes and incorporated herein as if written verbatim within the confines of this Warrant**”) (emphasis in the original).

In its ruling, the Tenth Court of Appeals correctly noted that both the search warrant and affidavit contain identical paragraphs describing the “suspected place.” *Patterson*, No. 10-19-00243-CR, 2020 Tex. App. LEXIS 9596 at *13-15; *See also* (6 RR 8-10, 16 – “Suspected Place” descriptions in the search warrant and affidavit). Notably, though, the court stated that “neither the affidavit in support of the warrant nor the search warrant itself identified [Appellant’s] room within the Sigma Nu Fraternity house as a place to be searched.” *Patterson*, No. 10-19-00243-CR, 2020 Tex. App. LEXIS 9596 at *15. With that statement, the court explicitly acknowledged that, in its particularity analysis, it did not consider the details of the investigation contained in the body of the incorporated affidavit. That portion of the affidavit, under the heading “Synopsis of Investigation,” specifically described Appellant’s bedroom as a place where suspected narcotics were located. *See* (6 RR 24 – Incorporated Affidavit stating, “**Room #216 belonging to Said Suspected**

Party #22 [Appellant] - coffee table: two small plastic baggies with white colored residue, white powdery substance arranged in a line”) (emphasis added).

When an affidavit is incorporated into a search warrant, it becomes a part of, and can be used to aid the description in, the search warrant. *Green v. State*, 799 S.W.2d 756, 760 (Tex. Crim. App. 1990) (citing *Phenix v. State*, 488 S.W.2d 759 (Tex. Crim. App. 1972)). Texas courts have long-recognized that factual affidavits are often critical in determining the validity of search warrants because they are usually far more specific and meticulous in reciting information known to an affiant than is the warrant which follows them. *See Green v. State*, 799 S.W.2d at 760.

Affidavits’ contents have often been found to have cured omissions or errors in search warrants. In *Rios v. State*, for example, a clerical error resulted in a search warrant being executed on a home, despite the face of the warrant itself only authorizing the search of a vehicle, rather than the residence. 901 S.W.2d 704, 705 (Tex. App.- San Antonio 1995, no pet.). The court considered the following question in its analysis, “...is it correct to consider the affidavit as well as the warrant, or is the standard of review limited to the warrant alone without the affidavit?” *Id.* at 705.

The court in *Rios* noted the following:

It is well-settled law in Texas that the description contained in the affidavit limits and controls the description contained in the warrant. (Citing *Madrid v. State*, 595 S.W.2d 106, 107 (Tex. Crim. App. 1979)

cert. denied, 449 U.S. 848 (1980) and *Cantu v. State*, 557 S.W.2d 107, 108-09 (Tex. Crim. App. 1977).

...

[The] warrant and the attached affidavit should be considered together as defining the place to be searched, but the description in the affidavit controls over the language of the warrant itself. (Citing *State v. Saldivar*, 798 S.W.2d 872, 873 (Tex. App. – Austin 1990, pet. ref'd).

Rios v. State, 901 S.W.2d at 706.

The court in *Rios* ruled that, despite the warrant's failure to even mention a residence to be searched, the warrant for the home was nevertheless valid because the incorporated affidavit adequately described the home. *Id.* at 707.

As noted above, the Tenth Court of Appeals ruled in Appellant's case that the search warrant was facially invalid because the description of Appellant's bedroom was not contained in a particular portion of the affidavit which discussed the "suspected place." *Patterson*, No. 10-19-00243-CR, 2020 Tex. App. LEXIS 9596 at *15; (6 RR 8-10, 16). Yet, Texas courts have never ruled that, where, as in Appellant's case, an incorporated affidavit specifically describes a place to be searched, that description should be disregarded unless it is written in a particular portion, or under a particular heading of the affidavit. There is, however, precedent establishing that *specific details of an investigation* contained in an incorporated

affidavit should be considered in a court's particularity analysis to determine whether a search warrant is facially valid.

In *Farek v. State*, the First Court of Appeals confronted a search warrant for contents of a cell phone which the appellant claimed was facially invalid as an “overbroad, impermissible, general warrant.” No. 01-18-00385-CR, 2019 Tex. App. LEXIS 5274 *14 (Tex. App. – Houston [1st Dist.] June 25, 2019, pet. ref’d) (not designated for publication) (internal quotation marks removed).

The warrant in *Farek* sought “any and all” data, images, media, and other information in the device. *Id.* at *20. Although general warrants failing to state with particularity the place to be searched or the evidence being sought are impermissible, the First Court of Appeals noted that a search warrant satisfies the Fourth Amendment’s particularity requirement by incorporating an affidavit which recites **facts** sufficient to show 1) that a specific offense has been committed, 2) that the property or items to be searched for constitute evidence of a crime, and 3) that the evidence sought is located at or within the thing to be searched. *Id.* at *19 (emphasis added).

In *Farek*, the First Court of Appeals ultimately ruled that the warrant was valid, relying on the fact that the contents of the incorporated affidavit directly linked the evidence being sought to the offense being investigated. *Id.* at *25. In so doing, the court considered facts which were clearly contained within the body of that

incorporated affidavit describing the details of the investigation, including that the defendant admitted to having taken pictures of guns stolen from a murder victim, and that there were conversations on the cell phone concerning stolen guns. *Id.* at *26. The court of appeals found that those details of the investigation which were described in the incorporated affidavit created a “**nexus between the facts and circumstances of the investigation and the items to be seized.**” *Id.* at *27 (emphasis added). Thus, the Fourth Amendment’s particularity requirement was satisfied by the affidavit’s inclusion of those details. *Id.* at *28.

The Eighth Court of Appeals very recently addressed a similar issue of particularity in search warrants in *Bowden v. State*, No. 08-19-00057-CR, 2021 Tex. App. LEXIS 6781 (Tex. App. – El Paso Aug. 18, 2021, no pet. history). In *Bowden*, police obtained search warrant for data contained in the defendant’s cell phone. *Id.* at 23-24. Bowden sought to suppress the evidence from his phone, arguing that the warrant was facially invalid because it failed to describe with particularity the items to be searched or seized. *Id.* at 24, 30-31. Specifically, Bowden complained that the warrant seeking “cell phone records” was overly-broad. *Id.* at 31.

The Eighth Court of Appeals ruled that, because the search warrant incorporated the supporting affidavit, and because that affidavit contained a detailed description of the offense being investigated, the particularity requirement was satisfied. *Id.* at 31.

Applying those principles to Appellant's case, the incorporated affidavit clearly and thoroughly described the investigation, as well as the nexus between that investigation and Appellant's bedroom, room 216 in the Sigma Nu house.

While both *Bowden* and *Farek* dealt with search warrants of electronic devices, *Affatato v. State* illustrates that the detailed information contained in an incorporated affidavit governs the scope and particularity of search warrants for homes as well. 169 S.W.3d 313 (Tex. App. – Austin 2005, no pet.). In *Affatato*, police received information that the defendant possessed narcotics inside his garage. *Id.* at 1-2. The defendant lived in an apartment complex. *Id.* *Affatato's* assigned garage unit, number "P3," was located in a different part of the complex from his residence. *Id.* Officers obtained a search warrant for *Affatato's* apartment, "as well as all outbuildings, motor vehicles, and curtilage thereof." *Id.* at 2. The search warrant did not specifically mention or describe the garage. *Id.*

In executing the warrant for the residence, an officer nevertheless searched *Affatato's* garage and discovered narcotics. *Id.* *Affatato* moved to suppress the drugs. *Id.* While *Affatato* did not claim the search warrant was facially invalid, he did claim that the garage was beyond the scope of the warrant. *Id.* *Affatato's* argument stemmed from the fact that the warrant failed to mention the garage as part of the place to be searched and, while the warrant did cover "outbuildings and curtilage," the garage was not connected to his residence, and was separated from

his apartment by public areas, including a parking lot and a sidewalk. *Id.* at 2-4. Thus, according to Affatato, the garage was not part of the apartment's curtilage or outbuildings, and was therefore not covered by the warrant. *Id.* at 2-4.

In its analysis, the Third Court of Appeals noted that it only needed to decide whether the warrant's description was "**sufficiently specific to apprise the officers of where they were to conduct the searches.**" *Id.* at 4 (emphasis added) (*citing* *Palmer v. State*, 614 S.W.2d 831, 833 (Tex. Crim. App. 1981); and *Haynes v. State*, 475 S.W.2d 739, 740 (Tex. Crim. App. 1971) (stating where a warrant describes a location in a multi-unit dwelling, the description must contain sufficient guidelines to apprise officers of the particular unit to be searched). The court followed the long-standing rule that, when an affidavit is attached to a search warrant, the two documents should be considered together as defining the place to be searched. *Id.* at 6. **Additionally, the court noted that, when a search warrant incorporates a supporting affidavit, that affidavit becomes part of the warrant itself.** *Id.*

The warrant for Affatato's apartment incorporated its supporting affidavit. *Id.* at 315, 317. The incorporated affidavit clearly stated Affatato's address, apartment number, and garage number. *Id.* at 317. In its analysis, one fact upon which the court relied was that the body of the affidavit contained a statement to police from Affatato's girlfriend that "[Affatato] goes to his garage #P3 located in the parking area of the apartment complex and brings back to his apartment a glass bowl

containing methamphetamine.” *Id.* at 315. Thus, with the information contained in the incorporated affidavit, police were able to locate and search Affatato’s specific garage unit. Consequently, the court ruled that the trial court properly denied Affatato’s motion to suppress. *Id.* at 317-318.

Similarly, in *Saldivar v. State*, the Third Court of Appeals used details in the body of an incorporated affidavit to determine that evidence was properly seized pursuant to a warrant. 798 S.W.2d at 875. In *Saldivar*, the trial court granted a motion to suppress evidence seized pursuant to a search warrant, ruling that the search of Saldivar’s house exceeded the scope of the warrant. *Id.* at 873. The State appealed, contending that the language in the warrant, combined with that in the incorporated affidavit, made clear that the home searched was within the warrant’s scope. *Id.*

On appeal, the court described what guided its analysis, noting:

- A warrant could not have been issued at all unless a supporting **affidavit set out sufficient facts** to satisfy the magistrate that probable cause existed, and that evidence regarding an offense would be found; *Id.* at 874 (emphasis added); and
- The function and purpose of a supporting affidavit is to enable the magistrate to judge the existence of probable cause “**from the facts recited in the affidavit.**” *Id.* (emphasis added);

The court went on to state, “Consequently, the statements in the affidavit have meaning primarily in reference to this purpose, and they must be understood

accordingly.” *Id.* The court then observed that, in Saldivar’s case, the affidavit set out “at some length” facts which showed a connection between the crime being investigated and the home which police searched. *Id.* Ultimately, the court ruled that, because the affidavit recited those facts and established that link between the crime being investigated and the place police searched, the trial court erred in suppressing the evidence found. *Id.* at 874-875. The court further noted that, in arguing that the evidence should have been suppressed, Saldivar asked the court to consider part of the affidavit “in isolation” as opposed to evaluating the “basic tenor of the document as a whole.” *Id.* at 874. The court concluded that the whole of a search warrant affidavit “would become meaningless” under a theory requiring courts to consider parts of an affidavit in a vacuum, rather than in context with the whole document. *Id.*

Turning to Appellant’s case, Tenth Court of Appeals emphasized that the warrant itself failed to specifically list Appellant’s bedroom in the fraternity house. *Patterson*, No. 10-19-00243-CR, 2020 Tex. App. LEXIS 9596 at *15. Yet, as noted above, the court was explicit in that it only considered the description found in one part of the affidavit, while completely disregarding the factual details recited later in the document which specifically described Appellant’s bedroom as being a place where suspected narcotics would be found.

As this Court noted in *Green v. State*, the warrant simply executes the determination of probable cause made by the magistrate, whereas the affidavit is intended to **inform and persuade**. 799 S.W.2d at 760 (emphasis added).

Here, the affidavit specifically informed and persuaded the magistrate that drugs were located in Appellant's bedroom, room 216 of the Sigma Nu fraternity house. (6 RR 22-24). That affidavit was incorporated into the warrant "for all purposes," and thus was part of the search warrant itself. (6 RR 8); *See also State v. Saldivar*, 798 S.W.2d at 873. As illustrated by cases such as *Farek*, *Bowden*, *Rios*, *Saldivar*, and *Affatato*, the details of an investigation found in an incorporated affidavit serve to both satisfy the Fourth Amendment's particularity requirement, and also establish and define the search warrant's scope.

Thus, even if Appellant's bedroom was, as he asserts, the only place in the Sigma Nu house in which he claimed a privacy interest, the facts contained in the incorporated affidavit satisfied the Fourth Amendment's particularity requirement by describing that room and the contraband it contained, thereby rendering the warrant facially valid.

For these reasons, the judgment of the Tenth Court of Appeals holding the search warrant in Appellant's case facially invalid should be reversed.

PRAYER

Wherefore, premises considered, the State of Texas respectfully prays that the judgment of the Tenth Court of Appeals be reversed, and that the judgment of the Trial Court be in all things affirmed.

Respectfully submitted,

JARVIS PARSONS
DISTRICT ATTORNEY
BRAZOS COUNTY, TEXAS

/s/ Ryan Calvert
Assistant District Attorney
State Bar No.24036308
rcalvert@brazoscountytexas.gov

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing State's Brief was emailed to Lane Thibodeaux, Attorney for Appellant, at lanet1@msn.com on this the 15th day of October, 2021.

/s/ Ryan Calvert

Ryan Calvert
Assistant District Attorney

CERTIFICATE OF COMPLIANCE WITH TEX. R. APP. P. 9.4

I do hereby certify that the foregoing document has a word count of 6736 based on the word count program in Word 2013.

/s/ Ryan Calvert

Ryan Calvert
Assistant District Attorney

APPENDIX
Search Warrant and
Incorporated Affidavit

S-415-16

Search Warrant
Page 1 of 4

THE STATE OF TEXAS §

COUNTY OF BRAZOS §

SEARCH WARRANT

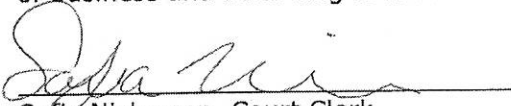
The State of Texas: To the Sheriff or any Peace Officer of Brazos County, Texas, or any Peace Officer of the State of Texas, or Special Investigator of the State of Texas or any Special Investigator of the United States:

Whereas, the affiant, whose name appears on the affidavit attached hereto is a peace officer or special investigator under the laws of Texas and did heretofore this day subscribe and swear to said affidavit before me **(which said affidavit is here now made a part hereof for all purposes and incorporated herein as if written verbatim within the confines of this Warrant)**, and whereas I find that the verified facts stated by affiant in said affidavit show that affiant has probable cause for the belief he expresses herein and establishes the existence of proper grounds for issuance of this Warrant;

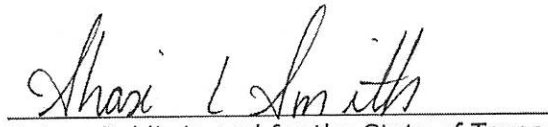
Now, therefore, you are commanded to enter the suspected place described in said affidavit, to-wit, the following:

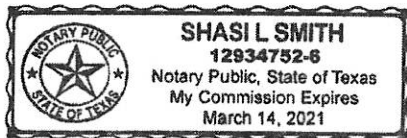
A multi-story, multi-wing residence building located at 550 Fraternity Row, College Station, Brazos County, Texas. The residence is known as the Sigma Nu Fraternity house and sits on the northeast corner of the Fraternity Row and Deacon Drive intersection. The exterior consists of light beige siding, and light beige colored brick. The main wing consists of a two story structure, with an open balcony with a wrought iron railing running the full length of the front of the building. There is a doorway located in the center. There are two large sized, multi-paned windows to both the right and left side of this doorway. Each window is further described as having dark brown shutters to either side. The lower level holds the main entrance, also centered in the building, with two large sized, multi-paned windows to both the right and left side of this doorway. The front of the residence building has six, individual, brick pillars which reach from the ground to the top of the second story. These pillars are made of beige colored brick. The two center most pillars are adorned with lighting sconces which are positioned near the center of the pillar, height wise. Centered on the second level and attached to the wrought iron railing are the two large, Greek letters for Sigma and Nu, which are dark brown in color surrounded by a white outline. Directly below these letters, the numbers "550" are affixed. The main entrance into the residence building faces towards the southwest and consists of two wooden doors which open outwards. The doors are painted maroon in color; with the right side door having a brown metal, latch style door knob with an attached electronic key pad positioned on the left side of the door. Above the door latch is a brown metal keyhole for a deadbolt style locking mechanism. The attached wing is also two storied and made up of beige colored brick. It is positioned on the northwest side of the main building. The southwest facing side of the attached wing holds four individual windows, two on each level, which consist of multi-paned windows and dark brown colored shutters to each side. Said Suspected Place also includes locations outside of

This will certify that the above is a true and correct copy of the Search Warrant.
The State of Texas Search Warrant # **S-415-16** according to the records of the
City of College Station Municipal Court. These records are kept in regular course
of business and according to law.


Sofia Nickerson, Court Clerk
City of College Station Municipal Court
College Station, Texas

Subscribed and sworn to before me this 28 day of September, 2017.


Notary Public in and for the State of Texas



the residence, such as garages, outbuildings, boxes, and other vehicles parked within the curtilage of Said Suspected Place.

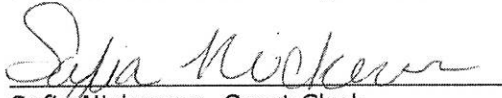
SAID SUSPECTED PLACE IS IN CHARGE OF AND CONTROLLED BY EACH OF THE FOLLOWING NAMED PARTIES (HEREAFTER CALLED "SUSPECTED PARTY" WHETHER ONE OR MORE) TO-WIT:

| | |
|--|----------------------------|
| John David Cane, W/M, 7/14/1997 | (Said Suspected Party #1) |
| Jackson Kyle Majewski, W/M, 6/4/1997 | (Said Suspected Party #2) |
| Anton Gridnev, W/M, 8/19/1997 | (Said Suspected Party #3) |
| Ty K. Robertson, W/M, 8/10/1995 | (Said Suspected Party #4) |
| Nathan Andrew Taylor, W/M, 7/19/1995 | (Said Suspected Party #5) |
| Brandon Little, Unknown Race/D.O.B. | (Said Suspected Party #6) |
| Zachary Kelsoe Farmer, W/M, 2/26/1996 | (Said Suspected Party #7) |
| Aaron Douglas Spring, W/M, 5/30/1996 | (Said Suspected Party #8) |
| Michael Steele Frymire, W/M, 8/13/1996 | (Said Suspected Party #9) |
| Adam James Patrick, W/M, 2/14/1997 | (Said Suspected Party #10) |
| William Pfeiffer, W/M, 5/14/1996 | (Said Suspected Party #11) |
| Justin Wu, A/M, 6/9/1995 | (Said Suspected Party #12) |
| Matthew Durst, Unknown Race/D.O.B. | (Said Suspected Party #13) |
| Maxwell Arthur Gollomp, W/M, 10/22/1996 | (Said Suspected Party #14) |
| Benjamin Jean Castagno, W/M, 12/27/1994 | (Said Suspected Party #15) |
| Christian Andrew Sandford, W/M, 9/8/1997 | (Said Suspected Party #16) |
| Benjamin Allan Ray, W/M, 5/31/1995 | (Said Suspected Party #17) |
| Brian Ogden, Unknown Race/D.O.B. | (Said Suspected Party #18) |
| Alec Statler, Unknown Race/D.O.B. | (Said Suspected Party #19) |
| Andrew Davis Hyman, Unknown Race/D.O.B. | (Said Suspected Party #20) |
| Cole Chase Teel-Jongebloed, W/M, 3/12/1996 | (Said Suspected Party #21) |
| Samuel Crawford Patterson, W/M, 7/12/1995 | (Said Suspected Party #22) |
| Thomas James Emeterio, W/M, 8/10/1995 | (Said Suspected Party #23) |

YOU ARE COMMANDED TO SEARCH FOR AND SEIZE THE FOLLOWING DESCRIBED PERSONAL PROPERTY, TO-WIT:

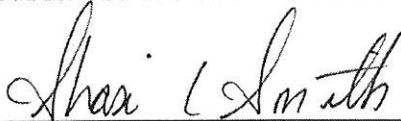
- A. A usable quantity of MARIJUANA, HEROIN, COCAINE, MOLLY (3,4-methylenedioxy-methamphetamine (MDMA)) and items commonly associated with the use, packaging and sales of MARIJUANA, HEROIN, COCAINE, MOLLY (3,4-methylenedioxy-methamphetamine (MDMA)), including scales, weighing devices, and measuring devices, packaging materials including paper bindles, glass vials, and plastic baggies, foils, sifters, filters, screens and cutting agents. Additionally, paraphernalia such as glass pipes and bongs, straws, syringes.
- B. Documents of sales of controlled substances consisting of buy/sales lists; record of personal and business transactions as relates to the purchase and sales of marijuana
- C. Financial records to facilitate the investigation of the laundering of illicitly obtained monies and/or other forms of assets acquired through criminal activity and subsequent evasion of governmental

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City of College Station Municipal Court. These records are kept in regular course
of business and according to law.

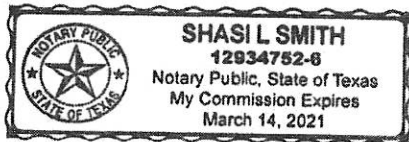


Sofia Nickerson, Court Clerk
City of College Station Municipal Court
College Station, Texas

Subscribed and sworn to before me this 28 day of September, 2017.



Notary Public in and for the State of Texas

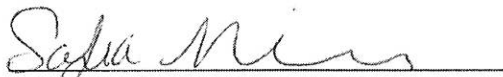


taxes, which include, but are not limited to, federal and state tax returns, employment papers, banking records and pass books, account information, canceled checks, deposit records, income and expenditures records, property acquisition records, money market accounts and/or similar accounts, records of stocks and/or bonds purchased or exchanged; credit card records; records reflecting the rental of safe deposit boxes; safe deposit box keys; records reflecting vehicles, aircraft or vessels owned, purchased, sold or leased; and negotiable instruments;

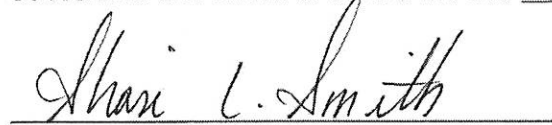
- D. Cellular telephones or portable communication devices capable of containing messages concerning drug trafficking or use and any messages, or other electronic data concerning drug trafficking contained therein that are in care, custody, or control of above named said suspected party or parties;
- E. Cellular telephones or portable communication devices capable of containing messages concerning drug trafficking or use and any messages, or other electronic data concerning drug trafficking contained therein that are in care, custody, or control of individuals that are present at said suspected place who are not named in the warrant yet probable cause can be established upon service of warrant;
- F. Electronic storage devices capable of displaying images or documents concerning drug trafficking or use and any images or documents contained therein, i.e. computer hardware, software and data including, but not limited to central processing units (CPU's), hard disks, hard disk drives, floppy disk drives, tape drives, CD-ROM drives, display screens, keyboards, printers, modems, personal digital assistants (PDA's), scanning devices, digital cameras / camcorders / VCR's, and other image capturing / reproducing devices, magnetic tapes, cassette tapes, and floppy disks found together or separately from one another, written documentation, whether typed or hand written, including, but not limited to, computer manuals and instructions for the use of any computers and their accessories as well as documentation containing passwords. Officers shall be allowed to remove all computer related items for later exam
- G. U.S. currency, negotiable instruments, securities, and other items of value from the illicit sales of narcotics which, are forfeit able under applicable statutes and if found the same or any part thereof, to hold such property in our possession under applicable statutes, or to release the property to the appropriate agency for State or Federal forfeiture proceedings;
- H. Articles of indicia tending to establish the identity of persons in control of the premises including, but not limited to: keys, mail, bills, utility receipts, rental receipts, and other personal property such as clothing
- I. The forensic analysis of the above-described computer(s) hard drive, cellular phone(s), or portable communication devices conducted within the approved forensic guidelines that will safeguard the integrity of the original data stored on the hard drive or cell phone

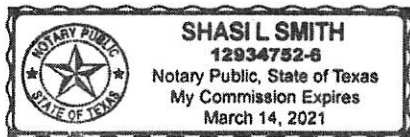
Further, you are ORDERED, pursuant to the provisions of Texas Code of Criminal Procedure Article 18.10, to retain custody of any property seized pursuant to this Warrant, until further order of this

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The State of Texas Search Warrant #**S-415-16** according to the records of the
City of College Station Municipal Court. These records are kept in regular course
of business and according to law.


Sofia Nickerson, Court Clerk
City of College Station Municipal Court
College Station, Texas

Subscribed and sworn to before me this 28 day of September, 2017.


Notary Public in and for the State of Texas



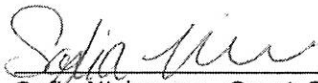
Court or until any other court of appropriate jurisdiction shall otherwise direct the manner of safekeeping of said property. The Court grants you leave and authority to remove such seized property from this county, if and only if such removal is necessary for the safekeeping of such seized property by you, or if such removal is otherwise authorized by the provisions of Article 18.10. You are further ORDERED to give notice to this Court, as part of the inventory to be filed subsequent to the execution of the Warrant, and as required by Article 18.10 of the place where the property seized hereunder is kept, stored and held.

HEREIN FAIL NOT, you shall execute this Warrant within three days, exclusive of the day of issuance and exclusive of the day of its execution, and bring return thereon, showing how you have executed the same.

ISSUED this the 20 day of August, A.D., 2016, at 11:30 o'clock A. M., to certify which witnesses my hand this day.

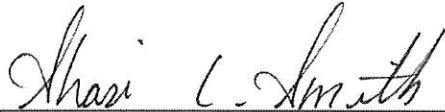

Ed Spillane
Judge, BRAZOS COUNTY
Ed Spillane
COLLEGE STATION MUNICIPAL COURT

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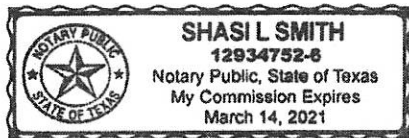


Sofia Nickerson, Court Clerk
City of College Station Municipal Court
College Station, Texas

Subscribed and sworn to before me this 28 day of September, 2017.



Notary Public in and for the State of Texas



THE STATE OF TEXAS

§

COUNTY OF BRAZOS

§

AFFIDAVIT FOR SEARCH WARRANT

BEFORE ME, THE UNDERSIGNED AUTHORITY, PERSONALLY APPEARED THE AFFIANT HEREIN, A PEACE OFFICER OR SPECIAL INVESTIGATOR UNDER THE LAWS OF TEXAS, WHO, BEING DULY SWORN, ON OATH MADE THE FOLLOWING STATEMENTS:


My name is Investigator J. Reilly Garrett with the College Station Police Department, and, as such, I am a peace officer according to the laws of the State of Texas.

I have reason to believe and do believe that evidence and contraband in violation of the laws of the State of Texas, specifically Texas Health and Safety Code Section 481.115 (Possession of Substance Penalty Group 1); and Section 481.121 (Possession of Marijuana) is contained in suspected place and property described below; and that evidence tending to show that the suspected party listed below committed offenses in violation of Texas Health and Safety Code Section 481.115 (Possession of Substance Penalty Group 1); and Section 481.121 (Possession of Marijuana) is contained in the suspected place/property.

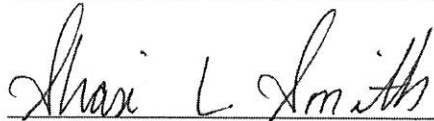
THERE IS IN BRAZOS COUNTY, TEXAS A SUSPECTED PLACE DESCRIBED AND LOCATED AS FOLLOWS:

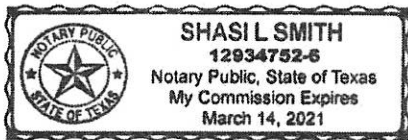
A multi-story, multi-wing residence building located at 550 Fraternity Row, College Station, Brazos County, Texas. The residence is known as the Sigma Nu Fraternity house and sits on the northeast corner of the Fraternity Row and Deacon Drive intersection. The exterior consists of light beige siding, and light beige colored brick. The main wing consists of a two story structure, with an open balcony with a wrought iron railing running the full length of the front of the building. There is a doorway located in the center. There are two large sized, multi-paned windows to both the right and left side of this doorway. Each window is further described as having dark brown shutters to either side. The lower level holds the main entrance, also centered in the building, with two large sized, multi-paned windows to both the right and left side of this doorway. The front of the residence building has six, individual, brick pillars which reach from the ground to the top of the second story. These pillars are made of beige colored brick. The two center most pillars are adorned with lighting sconces which are positioned near the center of the pillar, height wise. Centered on the second level and attached to the wrought iron railing are the two large, Greek letters for Sigma and Nu, which are dark brown in color surrounded by a white outline. Directly below these letters, the numbers "550" are affixed. The main entrance into the residence building faces towards the southwest and consists of two wooden doors which open outwards. The doors are painted maroon in color; with the right side door having a brown metal, latch style door knob with an attached electronic key pad positioned on the left side of the door. Above the door latch is a brown metal keyhole for a deadbolt style locking mechanism. The attached wing is also two storied and made up of beige colored brick. It is positioned on the northwest side of the main building. The southwest facing side of the attached wing holds four individual windows, two on each level, which consist of multi-paned windows and dark brown colored shutters to each side. Said Suspected Place also includes locations outside of the residence, such as garages, outbuildings, boxes, and other vehicles parked within the curtilage of Said Suspected Place.

This will certify that the above is a true and correct copy of the Search Warrant.
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City of College Station Municipal Court. These records are kept in regular course
of business and according to law.


Sofia Nickerson, Court Clerk
City of College Station Municipal Court
College Station, Texas

Subscribed and sworn to before me this 28 day of September, 2017.


Notary Public in and for the State of Texas



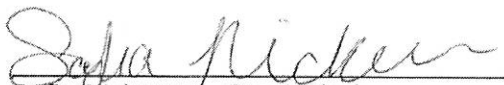
SAID SUSPECTED PLACE IS IN CHARGE OF AND CONTROLLED BY EACH OF THE FOLLOWING NAMED PARTIES (HEREAFTER CALLED "SUSPECTED PARTY" WHETHER ONE OR MORE) TO-WIT:

| | |
|--|----------------------------|
| John David Cane, W/M, 7/14/1997 | (Said Suspected Party #1) |
| Jackson Kyle Majewski, W/M, 6/4/1997 | (Said Suspected Party #2) |
| Anton Gridnev, W/M, 8/19/1997 | (Said Suspected Party #3) |
| Ty K. Robertson, W/M, 8/10/1995 | (Said Suspected Party #4) |
| Nathan Andrew Taylor, W/M, 7/19/1995 | (Said Suspected Party #5) |
| Brandon Little, Unknown Race/D.O.B. | (Said Suspected Party #6) |
| Zachary Kelsoe Farmer, W/M, 2/26/1996 | (Said Suspected Party #7) |
| Aaron Douglas Spring, W/M, 5/30/1996 | (Said Suspected Party #8) |
| Michael Steele Frymire, W/M, 8/13/1996 | (Said Suspected Party #9) |
| Adam James Patrick, W/M, 2/14/1997 | (Said Suspected Party #10) |
| William Pfeiffer, W/M, 5/14/1996 | (Said Suspected Party #11) |
| Justin Wu, A/M, 6/9/1995 | (Said Suspected Party #12) |
| Matthew Durst, Unknown Race/D.O.B. | (Said Suspected Party #13) |
| Maxwell Arthur Gollomp, W/M, 10/22/1996 | (Said Suspected Party #14) |
| Benjamin Jean Castagno, W/M, 12/27/1994 | (Said Suspected Party #15) |
| Christian Andrew Sandford, W/M, 9/8/1997 | (Said Suspected Party #16) |
| Benjamin Allan Ray, W/M, 5/31/1995 | (Said Suspected Party #17) |
| Brian Ogden, Unknown Race/D.O.B. | (Said Suspected Party #18) |
| Alec Statler, Unknown Race/D.O.B. | (Said Suspected Party #19) |
| Andrew Davis Hyman, Unknown Race/D.O.B. | (Said Suspected Party #20) |
| Cole Chase Teel-Jongebloed, W/M, 3/12/1996 | (Said Suspected Party #21) |
| Samuel Crawford Patterson, W/M, 7/12/1995 | (Said Suspected Party #22) |
| Thomas James Emeterio, W/M, 8/10/1995 | (Said Suspected Party #23) |

IT IS THE BELIEF OF AFFIANT, AND AFFIANT HEREBY CHARGES AND ACCUSES THAT SAID SUSPECTED PARTY HAS POSSESSION OF AND IS CONCEALING AT SAID SUSPECTED PLACE IN VIOLATION OF THE LAWS OF TEXAS OR ITEMS WHICH MAY BE EVIDENCE OF A CRIME, THE FOLLOWING DESCRIBED PERSONAL PROPERTY, TO-WIT:

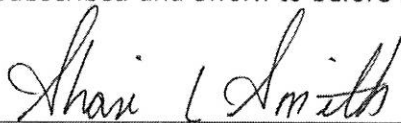
- A. A usable quantity of MARIJUANA, HEROIN, COCAINE, MOLLY (3,4-methylenedioxy-methamphetamine (MDMA)) and items commonly associated with the use, packaging and sales of MARIJUANA, HEROIN, COCAINE, MOLLY (3,4-methylenedioxy-methamphetamine (MDMA)), including scales, weighing devices, and measuring devices, packaging materials including paper bindles, glass vials, and plastic baggies, foils, sifters, filters, screens and cutting agents. Additionally, paraphernalia such as glass pipes and bongs, straws, syringes.
- B. Documents of sales of controlled substances consisting of buy/sales lists; record of personal and business transactions as relates to the purchase and sales of marijuana
- C. Financial records to facilitate the investigation of the laundering of illicitly obtained monies and/or other forms of assets acquired through criminal activity and subsequent evasion of governmental taxes, which include, but are not limited to, federal and state tax returns, employment papers,

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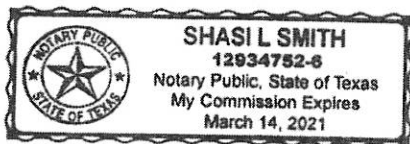


Sofia Nickerson, Court Clerk
City of College Station Municipal Court
College Station, Texas

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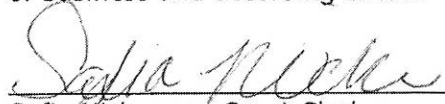
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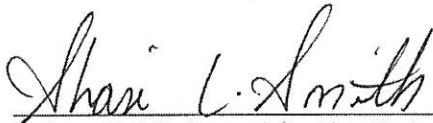
banking records and pass books, account information, canceled checks, deposit records, income and expenditures records, property acquisition records, money market accounts and/or similar accounts, records of stocks and/or bonds purchased or exchanged; credit card records; records reflecting the rental of safe deposit boxes; safe deposit box keys; records reflecting vehicles, aircraft or vessels owned, purchased, sold or leased; and negotiable instruments;

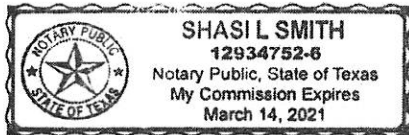
- D. Cellular telephones or portable communication devices capable of containing messages concerning drug trafficking or use and any messages, or other electronic data concerning drug trafficking contained therein that are in care, custody, or control of above named said suspected party or parties;
- E. Cellular telephones or portable communication devices capable of containing messages concerning drug trafficking or use and any messages, or other electronic data concerning drug trafficking contained therein that are in care, custody, or control of individuals that are present at said suspected place who are not named in the warrant yet probable cause can be established upon service of warrant;
- F. Electronic storage devices capable of displaying images or documents concerning drug trafficking or use and any images or documents contained therein, i.e. computer hardware, software and data including, but not limited to central processing units (CPU's), hard disks, hard disk drives, floppy disk drives, tape drives, CD-ROM drives, display screens, keyboards, printers, modems, personal digital assistants (PDA's), scanning devices, digital cameras / camcorders / VCR's, and other image capturing / reproducing devices, magnetic tapes, cassette tapes, and floppy disks found together or separately from one another, written documentation, whether typed or hand written, including, but not limited to, computer manuals and instructions for the use of any computers and their accessories as well as documentation containing passwords. Officers shall be allowed to remove all computer related items for later exam
- G. U.S. currency, negotiable instruments, securities, and other items of value from the illicit sales of narcotics which, are forfeit able under applicable statutes and if found the same or any part thereof, to hold such property in our possession under applicable statutes, or to release the property to the appropriate agency for State or Federal forfeiture proceedings;
- H. Articles of indicia tending to establish the identity of persons in control of the premises including, but not limited to: keys, mail, bills, utility receipts, rental receipts, and other personal property such as clothing
- I. The forensic analysis of the above-described computer(s) hard drive, cellular phone(s), or portable communication devices conducted within the approved forensic guidelines that will safeguard the integrity of the original data stored on the hard drive or cell phone

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AFFIANT HAS PROBABLE CAUSE FOR THE SAID BELIEF BY REASON OF THE FOLLOWING FACTS, TO-WIT:

BACKGROUND OF AFFIANT

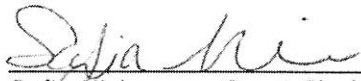
Affiant is a peace officer of the State of Texas and has been a peace officer for over 5 years (June 2011) and am presently employed by the College Station Police Department, as an Investigator in the Special Investigations Unit (SIU), a part of the Criminal Investigations Division. Affiant has received training in Basic Narcotics Investigations from the Regional Counterdrug Training Academy, as well as having additional experience and training in the recognition of marijuana, heroin, cocaine and MDMA by sight and smell. Affiant has participated in numerous street level narcotics investigations and currently holds an Intermediate Peace Officer certificate. Affiant has previously served narcotics search warrants and has participated in the service of numerous other narcotics search warrants. Affiant served on the Patrol Division from 2011 until 2014, where he was a Field Training Officer and SWAT Operator. In 2014 Affiant began serving in the Criminal Investigations Division. Affiant is currently assigned to the Special Investigations Unit within the Criminal Investigations Division.

SYNOPSIS OF INVESTIGATION

On 8/20/16, at approximately 0441 hours, an emergency call was transferred to the College Station Police Department from the Texas A&M University Police Department. The caller advised that she was currently located at Said Suspected Place and believed that Said Suspected Party #3 was suffering from an overdose. The caller reported that she had been advised that Said Suspected Party #3 had been taking some type of opioid. The College Station Fire and Police Departments responded and found Said Suspected Party #3 to be on the ground near the front doorway to Said Suspected Place. Emergency medical treatment was provided and Said Suspected Party #3 was transported to the College Station Medical Center where he was later pronounced deceased.

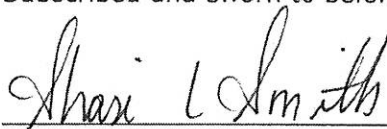
The on-scene investigation revealed Said Suspected Place to be operated by the Sigma Nu Fraternity, and consisting of multiple common areas such as entertainment rooms, meeting rooms, kitchen, bathrooms, and 25 individual bedrooms which are rented by the Said Suspected Parties. On this date, the Fraternity hosted a party which was attended by a large number of people; both residents and non-residents. It was determined that at approximately 0410 hours, the College Station Medical Center received a call inquiring as to what actions should be taken when someone has overdosed. A second call was received approximately 15 minutes later, again inquiring as to what should be done and further stating that they did not want the Police involved due to the "substances" that would be found at the Said Suspected Place. The emergency call to EMS and Police was then received at approximately 0441 hours; with the first unit arriving at 0448 hours. Witnesses interviewed on scene reported that Said Suspected Party #3 had been celebrating his birthday (8/19/16) and was known to have ingested an unknown quantity of: Alprazolam, Hydrocodone, MDMA, and possibly Heroin, within the hours preceding his death. He was found unconscious and unresponsive by Said Suspected Party #22 and dragged from his bedroom on the first floor, to the main entrance of the residence where he was found by first responders.

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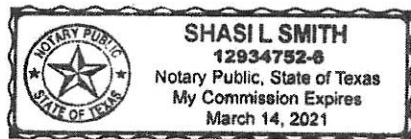


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During the initial response by the Police arriving on scene, a protective sweep was conducted of the entirety of the residence in an attempt to locate any additional victims, witnesses. During this sweep, the following items were observed in plain view:

1. Down stairs theater room – coffee table: a zip lock style sandwich bag, lighter, small metal screen commonly used as paraphernalia when smoking marijuana or THC concentrates, and a second plastic bag with a small amount of what appeared to be THC concentrate on it.
2. Room #104 belonging to Said Suspected Party #3 (Decedent) – desktop: a drinking straw which had been cut into three sections, a white powdery substance consistent with the appearance of cocaine, a key card with a white powdery substance on it, a prescription pill bottle for Vyvanse in the name of Said Suspected Party #22.
3. Room #105 belonging to Said Suspected Party #4 – nightstand near bed: small glass pipe with burned marijuana residue.
4. Room #213 belonging to Said Suspected Party #19 – desktop: small circular mirror with cut straws, crushed blue colored powder, two small plastic baggies with white colored residue. Prescription pill bottle with label removed and containing marijuana was found on an adjacent shelf.
5. Room #216 belonging to Said Suspected Party #22 – coffee table: two small plastic baggies with white colored residue, white powdery substance arranged in a line.
6. Room #214 belonging to Said Suspected Party #20 – coffee table: metal grinder with marijuana residue.
7. Room #210 belonging to Said Suspected Party #16 – desktop: prescription bottle with marijuana residue.
8. Room #207 belonging to Said Suspected Party #13 – desktop: glass bong.
9. Room #202 belonging to Said Suspected Party #8 – closet shelf: glass jar with mushrooms consistent in appearance with Psilocybin mushrooms.
10. Room #203 belonging to Said Suspected Party #9 – nightstand: glass bong and metal grinder. Nearby desktop: marijuana residue.
11. Room #208 belonging to Said Suspected Party #14 – dresser top: glass pipe with burned marijuana, metal grinder.


REQUEST TO SEARCH FOR DIGITAL EVIDENCE

Based on Affiant's experience, narcotics use and sales are an ongoing criminal venture. Based on Affiants' experience and training, Affiant knows that items of evidence of such ongoing ventures will be kept in a person's residence. Such evidence can include items like ledgers and phone messages which are generally maintained for extended periods of time.

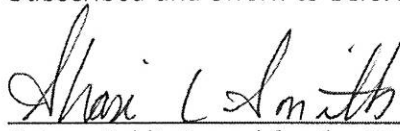
Based on Affiant's training and experience, in order to completely and accurately retrieve data maintained in computer or cell phone hardware or on computer or cell phone software, to ensure accuracy and completeness of such data, and to prevent the loss of the data either from accidental or programmed destruction, it is often necessary that computer hard drives or cell phones be copied and examined by a qualified computer specialist.

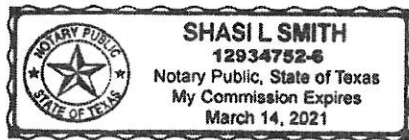
Affiant is therefore requesting that a forensic examination of any computer, cellular telephone and computer related media found at the above locations be conducted for evidence of criminal activity, specifically related to the planning and commission of this offense.

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If authorized to search the above-described computer(s) hard drive or cellular phone(s), the forensic analyst will conduct the search within the approved forensic guidelines that will safeguard the integrity of the original data stored on the hard drive or cell phone.

Affiant knows, based on training and experience, that computers store the names of the people the operating system is registered to, as well as the name of the person to whom the programs are registered. Written documents are also often found that bear the name of the person that wrote them.

The above information is used for indicia of ownership to establish the identity of person(s) in control of the computer(s) or cellular phone(s).

REQUEST TO SEARCH CURTILAGE FOR EVIDENCE

Based on the Affiant's experience in conducting narcotic investigations, he found it is common for individuals to conceal the illegal substances in locations outside of the residence, such as garages, outbuildings, boxes, vehicles parked within the curtilage of Said Suspected Place so as to avoid detection by law enforcement. Affiant wishes to include these locations in the search warrant.

Affiant knows through his experience that it is common for places where narcotics are being sold to be populated by buyers and sellers who will be in possession of narcotics on their person.

WHEREFORE, INVESTIGATOR J. REILLY GARRETT ASKS FOR ISSUANCE OF A WARRANT THAT WILL AUTHORIZE THE SEARCH OF SAID SUSPECTED PLACE FOR SAID PERSONAL PROPERTY AND SEIZE THE SAME AND TO TAKE CUSTODY OF ALL SEIZED PROPERTY AND SAFEKEEP SUCH PROPERTY AS PROVIDED BY STATUTE.



J. Reilly Garrett #844 J. Garrett
AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME BY SAID AFFIANT ON THIS THE 20th DAY OF August, A.D., 20 16.

Ed Spillane
Judge, Signature

Ed Spillane
Judge, Print

College Station Municipal Court
Court, BRAZOS COUNTY

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 58224968

Status as of 10/15/2021 2:58 PM CST

Associated Case Party: Brazos County District Attorney's Office

| Name | BarNumber | Email | TimestampSubmitted | Status |
|--------------|-----------|--------------------------------|------------------------|--------|
| Ryan Calvert | | rcalvert@brazoscountytexas.gov | 10/15/2021 11:18:04 AM | SENT |

Associated Case Party: SamuelC.Patterson

| Name | BarNumber | Email | TimestampSubmitted | Status |
|-------------------|-----------|----------------|------------------------|--------|
| Lane D.Thibodeaux | | lanet1@msn.com | 10/15/2021 11:18:04 AM | SENT |

Case Contacts

| Name | BarNumber | Email | TimestampSubmitted | Status |
|--------------|-----------|---------------------------|------------------------|--------|
| Stacey Soule | 24031632 | information@spa.texas.gov | 10/15/2021 11:18:04 AM | SENT |